No. 11,874

IN THE

United States Court of Appeals

For the Ninth Circuit

In the Matter of
CHRIST'S CHURCH OF THE GOLDEN RULE,
a California Non-Profit Religious Corporation,
Bankrupt.

PETER PETERSEN, MRS. PETER PETERSEN and GEORGE D. PATRICK,
Appellants,

vs.

PAUL W. SAMPSELL, L. BOTELER and McINTYRE FARIES, as Trustees in Bankruptcy of the Estate of Christ's Church of The Golden Rule, Bankrupt, and CHRIST'S CHURCH OF THE GOLDEN RULE, Bankrupt,
Appellees.

APPELLANTS' REPLY BRIEF.

HOWARD B. CRITTENDEN, JR.,
Central Tower, San Francisco 3, California,
Attorney for Appellants.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO

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APPELLANTS' REPLY BRIEF.

THE PETERSENS AND PATRICK AS PERSONS IN THE RELIGIOUS SOCIETY ARE PROPER PARTIES IN THE INSTANT PROCEEDING.

The Appellees urge in their brief that the Appellants are not proper parties to bring the instant proceedings.

In the District Court, the Appellees attempted to insert such a finding, but the Court refused and struck the proposed finding (Appellants' Suppl. pp. 123-4).

In the summary proceedings against the Appellants, the Appellees urged that the Petersens and Patrick had forfeited their respective property for religious beliefs and affiliations with the religious society at bar, whose temporal agency had fallen into the clutches of bankruptcy. The records of both those summary proceedings were made grounds of and a basis for the instant motion (Appellants' Suppl. p. 29). We need not go through the extensive evidence in those transcripts and a part of the instant appeal record. We need only point to contentions of Appellees' counsel shown in the printed portions of the record.

(a) Mr. Martin, attorney for Appellees, stated Petersens were "loyal members" of the church and had not withdrawn from the corporate or ecclesiastical body, and their case must be treated differently from those who had withdrawn (Appellants' Suppl. pp. 57-8).

(b) Mr. Martin urged that Mr. Petersen had not rescinded his relationship with the church; he said he sits an active participant in the church group (Appellants' Suppl. p. 58).

(c) Mr. Hunt, attorney for Appellees, stated that in Patrick's matter he would not stipulate to anything, as he was a "loyal" member (Appellants' Suppl. p. 59).

(d) Mr. Hunt charged Patrick had not repudiated any of the religious beliefs and that he has not shown

that he has completely severed himself from the church or that he expects to do so in the future (Appellants' Suppl. pp. 114-5).

(c) Mr. Hunt stated the Patrick record showed that he went to work on a church project and was active in the church (Appellants' Suppl. p. 116).

It is the established law, that those in a religious society may bring an action for the society, even if there be a board of trustees of the society.

Wheelock v. First Presbyterian Church, 119 Cal. 477, 51 P. 841.

Aside from this, the Appellants were subjected to a course of treatment and conduct without precedent. The Appellees brought them into the Bankruptcy Court upon summary proceedings, claiming their property forfeited, upon various grounds, including their religious beliefs and affiliations; subjected them to an inquisition as to their religious beliefs and church affiliations; the Appellees moved to have the respective defenses of the Appellants struck for reason of their religious beliefs, and the Referee struck them for that reason. Jurisdiction in summary proceedings against the Petersens for their home and their business was predicated upon their religious affiliations and the affiliations of those working with them. The lack of jurisdiction to adjudicate the religious society's temporal agency and the religious persecutions were raised before the Referee in 1946 in these summary proceedings. Both the summary proceedings against Appellants were taken on review to the District Court, and both came on for hearing

in the District Court at the same time. To clearly present these points, the motion was noticed and heard with the reviews. It was their shield to protect themselves from the unprecedented religious persecutions and attack upon Appellants by Appellees. It was the Appellants' shield to protect their constitutional rights stated in the Bill of Rights, and to protect their church. Although the Court could consider matters of jurisdiction and matters of abuse of its temple and process *sua sponte,* of its own motion, when it appeared in the evidence in these reviews (see Appellants' Opening Brief, pp. 24-5, 31-2), it was considered better to present the entire matter fully and clearly by a motion. Our jurisprudence relies upon counsel to present matters to it and does not contemplate the judge making independent investigations of pending cases. This is what counsel did, and the matter was presented by motion, and evidence in support offered and some received. Much appeared in the records on review in the two cases of the Appellants. The Appellants are entitled to be heard in defense of their constitutional rights set forth in the Bill of Rights—freedom of religion. The Appellants have a standing in this Court to defend themselves and their church from abuse of the federal judiciary through the Bankruptcy Courts in such a religious persecution as shown in the record of the case at bar, and certainly when the judicial proceedings are without jurisdiction. We submit they are proper parties in this proceeding, and entitled to the protection of this Court.

THERE WAS NO JURISDICTION TO ADJUDICATE THE TEMPORAL AGENCY A BANKRUPT.

1. There is no more firmly established rule of law than that a Court without jurisdiction cannot have jurisdiction conferred upon it by laches, estoppel or consent.

2. It is an axiom of our law that the question of jurisdiction to hear and decide can be raised at any time during the proceedings.

3. As in *Valley v. Northern F. & M. Ins. Co.,* 254 U.S. 348, 41 S.Ct. 116, 65 L.Ed. 297, the facts appeared in the petition. In the case at bar it is affirmatively alleged the Petitioner under Chapter XI was a California non-profit religious corporation, conducting the affairs for the benefit of a religious society (Pars. I and IV, Appellants' Suppl. pp. 2-4). It is affirmatively alleged in the voluntary petition (Appellants' Suppl. p. 15). It is the established law of California that a religious society with a non-profit California religious corporation as a temporal agency, holds its property in the name of the temporal agency under a trust for the ecclesiastical society and the individuals in it, with power to control and manage in the interests of the spiritual ends of the church, and the temporal agency is a subordinate factor. See Appellants' Opening Brief, pages 14 to 19.

4. Appellees stated in their brief, page 7, that Judge Mathes dismissed the plan of arrangement and then adjudicated the church a bankrupt. The order of the District Court dismissed the chapter proceedings by denying the petition which attempted to ini-

tiate it,[1] and attempted to adjudicate the church temporal agency a bankrupt (Appellants' Suppl. p. 20).

(a) After dismissal of a proceedings in bankruptcy, the Court has no jurisdiction to hear or determine any controversy between the petitioning creditor and the firm alleged to be a bankrupt.

In re Sig. H. Rosenblatt & Co. (2nd Cir.), 193 F. 638.

(b) The statute, 11 *U.S.C.A.* 776, provides where an arrangement fails, there is either an adjudication after notice and a hearing *or* a dismissal of the proceedings, which ever may be in the interest of creditors.[1a]

It appears from the District Court's order for dismissal and order for adjudication (Appellants' Suppl. p. 20) that there was a contest and notice as to the

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[1]The order states: "* * * that the Debtor's petition for an arrangement under Section 322, Chapter XI, of the Bankruptcy Act as amended, be and said petition is hereby denied without prejudice to the right of the Debtor hereafter to file a further petition for an arrangement under Section 321, Chapter XI of the Bankruptcy Act, as amended, if so advised;"

[1a]11 *U.S.C.A.* 776 reads: "If an arrangement is withdrawn or abandoned prior to its acceptance, or is not accepted at the meeting of creditors or within such further time as the court may fix, or if the money or other consideration required to be deposited or the application for confirmation is not filed within the time fixed by the court, or if confirmation of the arrangement is refused the court shall * * *"

(1) (Where petition was filed in a bankruptcy proceedings under Sec. 721.)

"(2) Where the Petiton was filed under Section 722 of this title, enter an order, upon hearing after notice to the debtor, the creditors and such other persons as the court may direct, either adjudicating the debtor a bankrupt and directing that bankruptcy be proceeded with pursuant to the provisions of this title or dismissing the proceedings under this chapter, whichever in the opinion of the court may be in the interest of the creditors."

legality of a Chapter proceedings, but no notice to creditors or those in the religious society or other interested persons as required under 11 *U.S.C.A.* 776, nor was the action taken by the Court in the interest of creditors. The Court acted in the conjunctive "and" both dismissing the proceedings and adjudicating the church temporal agency, not in the alternative "or" of the statute either dismissing or adjudicating a bankrupt. Having dismissed the proceedings no Court would have jurisdiction to immediately make a judgment of adjudication of status of bankruptcy against a party to the proceedings already dismissed.

It appears from the record that the District Judge entertained a doubt as to Chapter proceedings which might terminate in an involuntary adjudication in bankruptcy of a church corporation which could not be adjudicated an involuntary bankrupt. See Appellants' Supplement, pages 86-7. The trial judge stated that in the original objection to the Chapter proceedings he was inclined to the view that involuntary adjudication would be impossible (which had inclined the Court against permitting the Chapter proceedings). It should be noted that the Court's view is the law, for a corporation, not a commercial, business or moneyed corporation cannot be under a Chapter proceedings for it cannot be involuntarily made a bankrupt. *Hoile v. United Life Ins. Co.* (4th Cir.), 136 F. 2d 133; *Mich. Sanitarium Benevolent Ass'n* (D.C. Mich.), 20 Fed. Supp. 979, appeal dismissed 96 F. 2d 1019 (both are Chapter X proceedings where "corporation" is defined as any corporation that can be ad-

judged a bankrupt, and "debtor" under Chapter XI is any person who can be adjudged a bankrupt). It follows that if the church temporal agency was not a person who could bring a Chapter XI proceedings, there was no proceedings under Chapter XI, Section 776, in which it could be adjudicated a bankrupt.

Of course, a religious society's corporate temporal agency from the nature and according to the California law under which it holds property for the ecclesiastical body and those in it under a trust, and by reason of our constitutional Bill of Rights and our heritage of freedom of religion, cannot be made the subject of an adjudication in bankruptcy. This is covered in the Opening Brief.

Appellees urge in their brief that because the religious society earned money, not begged it, whose ultimate use and destination were religious uses, it was a moneyed, business or commercial corporation under the bankruptcy law. The temporal agency was incorporated under the non-profit corporation laws of California (Appellants' Suppl. p. 2). Provisions of the state law under which the corporation was incorporated that it is non-profit has a predominate influence upon the Court in bankruptcy proceedings when such a claim is raised.

Hoile v. United Life Ins. Co. (4th Cir.), 136 F. 2d 133, 148 A.L.R. 710.

That a corporation, entity or trust may engage in a commercial enterprise for profit does not effect the character of the activities, if the ultimate destination of all net earnings is for religious, charitable or other

eleemosynary purposes exclusively. There are a line of taxes cases on this point.

Roche's Beach v. C.I.R., 96 F. 2d 776;

Sokol v. Higgins (2nd Cir.), 147 F. 2d 774;

Jones v. Better Business Bureau of Okla. City (10th Cir.), 123 F. 2d 767;

Hanover Improvement Soc. Inc. v. Gage (1st Cir.), 92 F. 2d 888;

Union & New Haven Trust Co. v. Eaton (D.C. Conn.), 20 F. 2d 419;

C.I.R. v. Battle Creek (5th Cir.), 126 F. 2d 405;

Slocum v. Bowers (D.C. N.Y.), 15 F. 2d 400, aff. 20 F. 2d 350;

Debs Memorial Radio Fund v. C.I.R. (2nd Cir.), 148 F. 2d 948;

Trinidad v. Sagrada Orden de Predicdores, 263 U.S. 578, 69 L.Ed. 458, 44 S.Ct. 204.

The statutes under which a corporation is incorporated, and the provisions of the charter that it is organized for non-profit tax exempt purposes are conclusive.

Harrison v. Barker Annuity Fund (7th Cir.), 90 F. 2d 286 (tax case).

In determining the character of a corporation as to whether it is one that may be adjudicated a bankrupt, the test is the power conferred by the charter and the statutes under which it is incorporated and not the activities of the corporation.

In re Union Guar. & Mtg. Co. (2nd Cir.), 75 F. 2d 984;

Security B. & L. Assoc. v. Spurlock (9th Cir.), 65 F. 2d 768;

In re Prudence Co. (2nd Cir.), 79 F. 2d 77, cert. denied 296 U.S. 646;
Clemons v. Liberty Sav. & Real Estate Co. (5th Cir.), 61 F. 2d 448.

There is no question that the church used all its income however derived exclusively for the religious purposes, and its temporal agency was incorporated under the California non-profit corporation laws intended for temporal agencies of religious societies and the like.

One of the religious doctrines of the religious society at bar is that Christianity can be lived and applied in every day life not merely talked about; and its ministry includes the spreading of its teachings of Christianity by precept and example, as well as by the written and spoken word. Its illustrations of its teachings includes every day activities; and that its ministry may support the activities of spreading its teachings by their religious illustrations makes it not a venture for profit, for by its very terms, all net income must be and was used exclusively for the religious purposes of the church.

Furthermore, it is the policy of the law that money and property dedicated to religious, charitable and eleemosynary purposes, be of necessity used for that purpose. For this reason they may not be forced into bankruptcy.

In re Michigan Sanitarium Benevolent Assoc. (D.C. Mich.), 20 F. Supp. 979.

Few would contribute to eleemosynary funds and corporations if they could be diverted from their use

and trust, however solvent, by a voluntary or involuntary bankruptcy, merely because of a difference between an official of the fund or corporation and some state official and there were about $3,500,000 of assets over some $111,000 of current debts. Even stronger is the case where the funds are owned by the spiritual body and those in it, and are held by a temporal agency in trust to manage and control in the interests of the spiritual body.

LACHES HAS NO APPLICATION IN THIS MATTER, CONFERS NO JURISDICTION, AND PRECLUDES NO DEFENSE IN EQUITY.

Appellees' brief makes much of their alleged defense of laches, without showing or contending equity would be done any creditor or any person in the religious society by such doctrine.

Appellees' contention would confer jurisdiction by laches where otherwise there is none.

Appellees' contention would preclude the Court from inquiring into the misuse of its temple, its processes, and the religious persecution in violation of the First Amendment, United States Constitution—a continuing series of acts and conduct—for they contend laches precludes any inquiry. In effect this contention gives the Appellees Trustees in Bankruptcy a vested prescriptive right to flaunt and continue to flaunt the Bill of Rights set forth in the Constitution, to misuse and continue to misuse the Court's temple as an inquisition as to religious beliefs, to strip and continue to strip those in the religious society of their property and their current earnings, to apply and con-

tinue to apply and urge rules of substantive and procedural law according to the individual's current religious beliefs and affiliations, to ransack and continue to ransack individuals' papers and to suppress and continue to suppress the religious literature. The statute of limitations in California is 2 years on an oral or implied contract (C.C.P. 339), 3 years for trespass, injury or taking of property (C.C.P. 338), 4 years on a written contract (C.C.P. 337) and 5 years for possession of real property (C.C.P. 336). Suits or proceedings against a person who acts as a trustee in bankruptcy must be brought within 2 years after the estate is closed (11 U.S.C.A. 29d). If laches be applied by analogy to the statute of limitations there remains ample time to seek redress and protection from any of the wrongs by these proceedings, for they may be brought within 2 years after the estate is closed, and it promises to be a long time before even the instant estate may be closed.

Laches is a bar to the use of equity as a sword, not its use as a shield.

Magee v. Brenneman, 188 Cal. 562, 206 P. 37.

30 *C. J. S.* 524, Equity, Sec. 113,

in which it is said:

> "The doctrine of laches is available only as a bar to affirmative relief; and hence the plaintiff cannot urge laches to bar a right asserted by the defendant merely by way of defense * * *"

In the instant case, Appellants are seeking a shield by way of defense. Appellants were among those hailed into Court by the Appellees, charged by a summary proceedings in which Appellees claimed their

property forfeited for religious beliefs and affiliations. Appellants were among those interrogated in the inquisition. Appellants were among those whose defenses were struck because of religious beliefs, yet permitted to others who had renounced their religious beliefs and promptly disassociated themselves from those in the religious society. Appellants were among those who suffered forfeiture upon the grounds of affiliations with the religious society—the grounds stated by the Referee in these cases. The Petersens refused to make donations of their earnings from their restaurant they built themselves and ran themselves, and were compelled by the Referee to impound their own earnings from their own current services. Patrick's stock in trade in his occupation as a plumber was seized and claimed forfeit for religious affiliations. The defense of religious persecution and the lack of jurisdiction in bankruptcy to adjudicate the Church were raised in these proceedings before the Referee in 1946. Appellants took their respective reviews from the Referee's orders and these reviews came on for hearing in the District Court on November 14, 1947. To clearly present their defenses and their personal constitutional rights, the matter was properly presented as a motion; and the factual matters occurring up to that time were offered in support of that motion. Appellants were using but a shield to the religious persecution and to the adjudication which was the instrument used against them and others in their religious society (Appellants' Opening Brief, pp. 20-22). The motion was presented along with the two review matters before the District Court, at the same

time, and based in part upon the records of the matters on review.

The Appellees seek to make much of the District Court's findings of fact that laches precludes Appellants' defense of their personal liberties and their religious society. However,

(a) There was no evidence offered by the Appellees in the District Court in support of their contention, and they rely upon judicial notice of their self serving declarations made in their *ex parte* report to the Referee.

(b) In such a bankruptcy proceedings, the Appellate Court reviews the evidence and forms its own independent opinion.

> *Security Bldg. & Loan Assoc. v. Spurlock* (9th Cir.), 65 F. 2d 768,

in it the Court said:

> "It is the duty of the court on this appeal to review the evidence and form its independent judgment upon the sufficiency thereof to support the adjudication * * *"

No hard and fast rule has been laid down by Courts when the defense of laches is raised. It is not raised by a determined period of time. There is one common element in all the cases, involving this defense; there must be not only unnecessary delay on the part of the plaintiff but also a change of conditions during the period of delay as to make it inequitable to permit the plaintiff to enforce his claim.

> *London & San Francisco Bank v. Dexter Horton Co.* (9th Cir.), 126 F. 593, cert. denied 194 US 631.

Laches is not a bar against a beneficiary of a trust, and the right of action by a beneficiary for protection of property in a trust does not arise until there is open disavowal of the trust.

Merritt Oil Corpor. v. Young (10th Cir.), 43 F. 2d 27.

A delay of 10 years in a creditor's attack upon a railroad reorganization under the supervision of equity, will not raise the defense of laches. The doctrine of laches rests upon equitable principles which are neither arbitrary nor technical, and what amounts to laches depends largely upon the circumstances of each individual case and ultimate inquiry being as to which side would fall the balance of justice in sustaining or denying the defense. No delay of the plaintiff creditor induced any stockholder or bondholder to go into the railroad reorganization, and thus there was no injury from the delay.

Northern Pac. Ry. v. Boyd, 228 US 482, 33 S. Ct. 554, 57 L. Ed. 931; see 9th Cir. opinion, 117 Fed. 803.

The doctrine of laches turns on the individual facts in each case and cannot be used as an instrument of oppression.

Cleveland Clinic Foundation v. Humphry (CCA-Ohio), 97 F. 2d 849, cert. denied 305 US 628.

No absolute rule applies to the defense of laches or staleness of demand; and equitable principles govern. It cannot be invoked to defeat justice.

Hoehn v. Crew (10th Cir.), 144 F. 2d 665.

If the suit in equity is brought within the analogous statutory period of the statute of limitations, the burden is on the defendant to show prejudice from the changed conditions, due to the delay.

Shell v. Strong (10th Cir.), 151 F. 2d 909.

Mere lapse of time alone does not constitute laches.

Winget v. Rochwood (8th Cir.), 69 F. 2d 326;

Kansas City Ry. v. May (CCA-Ark.), 2 F. 2d 680;

City of Roswell, N. Mex. v. Mountain Sts. T. & T. Co. (10th Cir.), 78 F. 2d 379;

Russell v. Todd, 309 US 280, 84 L. Ed. 752, 60 S. Ct. 527.

II.

There are two kinds of jurisdiction, that of the subject matter and that of the person. Lack of jurisdiction as to the subject matter to adjudicate bankruptcy in the case at bar by reason of the Constitutional provisions in the Bill of Rights, and the nature of a religious society and its means of holding property through a temporal agency have been fully covered in the opening brief. Jurisdiction to adjudicate in bankruptcy, over subject matter not within that jurisdiction, cannot be conferred by laches.

Lack of jurisdiction for want of the person before the Court at the time of the attempted adjudication, is also pointed out in the Opening Brief. The spiritual body and those in it are the true owners and those with the full right of enjoyment of all the property; and the temporal agency is a subservient repository for holding title to property. Bankruptcy does

not pass property held in trust by the bankrupt for another. Laches does not confer jurisdiction over the spiritual body and those in it.

(a) Even if the corporation temporal agency should own property of its own, free of any trust for the spiritual body, which would not be possible under California law, the corporation president cannot put the corporation into bankruptcy without the consent of the corporation. The 9th Circuit rule, as pointed out in the opening brief, is that where there are restrictive statutes as there are in California as to the power to dispose of all of the assets only with stock holders' consent, the stockholders or the members (if not a stock company) must consent, otherwise there is no jurisdiction by voluntary petition in bankruptcy. If there is no jurisdiction of the person, laches cannot confer it.

(b) The owners of the trust—the spiritual body and those in it were not before the Court and did not authorize nor consent to any such bankruptcy proceedings. This lack of jurisdiction of the person cannot be conferred by laches.

(c) There was no reality of consent of the corporation's president to the voluntary adjudication of the church temporal agency. The essence of fraud or mistake is the lack of this reality of consent which prevents acts of a person from having the effect they otherwise would have if there were reality of consent. The testimony of attorney and client appear in the record. A state receivership was aimed against Mr. Bell's management of the Church money and property and Mr. Bell was led by his counsel to believe that a

Chapter Bankruptcy proceedings was the placing of certain assets in the care of the Court to guarantee the payment of listed creditors (Appellants' Suppl. p. 83). There was an attempt to look to the Federal Court for protection of freedom of religion (Suppl. p. 89), and Chapter proceedings would not interfere with the Church activities and the Church property would be protected from dissipation (Suppl. pp. 90-91). Voluntary proceedings were discussed very briefly after it appeared the Court would not permit Chapter proceedings (Suppl. pp. 92-3). On bankruptcy adjudication only sufficient property would be liquidated to pay the current debts of $111,000, and the religious rights would be protected (Suppl. p. 95), and upon this sale, the Court would release the Church (Suppl. p. 96), and the religious uses and religious part would remain untouched (p. 96). Mr. Utley testified he advised Mr. Bell that a Chapter proceedings left the debtor in possession, though a receivership might be advisable, that a majority of the $111,000 unsecured creditors had to consent to the plan, that an adjudication would require the liquidation of so much of the estate as was necessary to pay the obligations and administration expenses and if it was a simple case with $3,500,000 of property to pay $111,000 debts, simple cases could be disposed of very hurriedly (pp. 99-104); that he would receive fair and just treatment in the Bankruptcy Courts (p. 104) and no religious persecution; and it would be less expensive in the Bankruptcy Courts (p. 105). That a voluntary adjudication would still permit the plan of arrangement (p. 107),

that bankruptcy was the line of demarcation as to what belonged to the estate and the corporation (p. 107), and the religious angle was thoroughly discussed (p. 108).

No person in charge of a religious society's temporal agency holding the property in trust for the spiritual body and those in it could be permitted to transfer by adjudication what he thought was $3,500,000 for $111,000 debts. That actual facts show a layman believing that the Bankruptcy Courts concerned themselves with the property claims and personal rights and religious liberty of bankrupts; that only $111,000 would be sold, Trustees' fees to be the 1% or 2% statutory maximum of the $111,000 of property to be sold, and the $3,400,000 would be untouched, remain in the use of the spiritual body and those in it subject to the religious uses and trust, and released very hurriedly.

How far different is bankruptcy in actual practice. Few creditors ever get more than a small per cent of their claims; and they may get nothing in this estate if administration continues as it has. All property must be liquidated—sold—the Appellees claim, free of its religious uses. All earnings and income were claimed by the Trustees after bankruptcy, and Petersens who would not give it were enjoined from taking even the products of their own current earnings. The Trustees in a year and a half have had $2,207,936.38 cash pass through their hands, and spent on administration, costs, attorney fees, etc. $277,089.09 yet not paid a cent of dividend on this $111,000 debt. Claims for taxes and "dissenters"

have sprung up and the latter have been aided and the former received no bona fide attempt to defend nor hastened to trial. The Trustees insist upon control of the litigation in these matters and prevent those in the religious society from joining in the tax claim defense. The Trustees in Bankruptcy put on the mantle of the Church and collected donations and services and ran the temporal affairs of the Church until the Court stopped them in September 30, 1946. Such a lush plum had fallen into the laps of the bankruptcy gang when their business was at a low ebb, that the Church officials and all in the loyal believers group must be harried, subjected to the inquisition, and the Lord's purse wasted, summary proceedings instituted against them and any excuse for litigation, incurring of fees or costs resorted to to prolong the proceedings so long as a cent remained.

There is a lack of decisions as to a trustee of an express trust placing the corpus of the trust into bankruptcy, probably because a court of equity supervises trusts and marshals assets and ratably distributes them among creditors of the trust. Although a person may, solvent or insolvent, dispose of his property by a decree of forfeiture through an adjudication in bankruptcy, a trustee of an express trust is placed upon a far different level in managing and handling trust funds than he is in handling his own property. If he has the bare legal title in trust for another, a trustee cannot take the amounts over the debts and dispose of them as he wishes without regard to the beneficiary or the bene-

ficiary's interest. So in the instant case, the trustee of an express trust—the corporate temporal agency for a religious society under the laws of California —cannot by its voluntary act whether a conveyance or an adjudication in bankruptcy dispose of the solvent corpus of the trust. This appeared affirmatively from the Chapter Petition with Schedules attached and from the voluntary Petition (Appellants' Suppl. 2-15) and this lack of jurisdiction appearing affirmatively cannot be waived nor jurisdiction conferred by laches. An interesting decision in line with this is the case of *Lord v. Hardie,* 82 N. Carol. 241, 33 Amer. Rep. 682 where the Court granted recovery of possession of silver communion-ware seized by a sheriff under execution on a judgment for a minister's wages. The Court pointed out the Church trustees, a quasi-corporate body, were the naked depositories of the legal title with capacity to act for the congregation; that any purchaser at execution sale would take subject to the religious trust; that the Church trustees were not able to devote the property to other purposes; and the Court raised the point that property dedicated to religious use might under the constitutional freedom of religion be protected from legal seizure.

III.

Under the Appellees' contention of the doctrine of laches there are two classes of citizens in these United States:

(1) Those who are litigious, who immediately file suit on the first provocation, and who resort to legal

remedies on the first threatened infringement of their personal rights.

(2) Those who avoid litigation if possible; who when made parties defendant or respondent raise their Constitutional questions and seek protection of infringement of their personal liberties; who present the question by proper remedy as a motion to attack an adjudication made without jurisdiction and an abuse of the Court's temple in a religious persecution. Who do so only when forced to, and then only when the evidence has been collected that will be irrefutable and conclusive.

The former group are the only ones who can enjoy the liberties guaranteed in the Bill of Rights, U. S. Constitution; and the latter by this contention are a separate class of citizens who by reason of the equitable doctrine of laches have no such personal liberties nor standing in court to protect them or ask for relief or to hold a shield against the positive affirmative acts of those who would strip them of these basic liberties, by misuse of the Federal judiciary's bankruptcy procedure. We submit that the freedoms guaranteed by the Bill of Rights, in the U. S. Constitution are not cut from that perishable type of material. Nor are there two classes of people in this great nation, one to whom the Constitutional Bill of Rights applies and another class to whom it does not apply. These Constitutional and inherent rights apply equally, to all persons, and can be lost only by bloody revolution in which our present system of jurisprudence and our judiciary are deposed by force of arms.

CONCLUSION.

The Appellants as persons in the religious society are proper persons to appeal to this Honorable Court in their own defense and in defense of their religious society.

Jurisdiction of the subject matter or the person, or both, where none exists, cannot be conferred by the doctrine of laches. No Trustee in Bankruptcy can obtain a prescriptive right to flaunt the Constitutional Bill of Rights nor misuse the Court's temple for a religious persecution.

This Honorable Court does not divide those in this great nation into two classes: the litigious who sue on the first provocation, and those who await until made defendants to raise the Constitutional question and any want of jurisdiction; that only the former class are entitled to their Constitutional Bill of Rights, and the latter class have no rights under the Constitution. On the contrary, no person under our Constitution loses the freedoms guaranteed by the Bill of Rights, but all are treated equally.

Dated, San Francisco, California,
October 8, 1948.

Respectfully submitted,
HOWARD B. CRITTENDEN, JR.,
Attorney for Appellants.